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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,386	05/16/2002	Martin Sagasser	DEBE:005US	2267
32425 7590 04/06/2007 FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVE. SUITE 2400 AUSTIN, TX 78701			EXAMINER KALLIS, RUSSELL	
			ART UNIT 1638	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/06/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/030,386	Applicant(s) SAGASSER ET AL.	
	Examiner Russell Kallis	Art Unit 1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16-20, 22, 23 and 25-30 is/are pending in the application.
4a) Of the above claim(s) 1-12, 23 and 28 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 is/are allowed.
- 6) ☒ Claim(s) 13, 14, 16-18, 20, 22, 25-27, 29 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/20/2006 has been entered.

Claims 1-14, 16-20, 22-23 and 25-30 are pending. Claims 1-12, 23 and 28 are withdrawn. Claim 24 has been cancelled. Claims 13-14, 16-20, 22, 25-27 and 29-30 are examined.

Rejection of claims 13-14, 16-18, 20, 22, 25-27 and 29-30 under 35 U.S.C. 112, second paragraph is withdrawn in view of Applicants amendments.

Rejection of claim 15 under 35 U.S.C. 112, first paragraph NEW MATTER is withdrawn in view of Applicant's amendment.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Objections

Claims 13-14, 16-18, 20, 22, 25-27 and 29-30 are objected to for being drawn to non-elected material decreased flavonoid content.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

Claims 13-14, 16-18, 20, 22, 25-27 and 29-30 remain rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This rejection is maintained for the reasons of record set forth in the Official action mailed 7/27/2005 and 7/19/2006. Applicant's arguments filed 4/28/2006 and 9/19/2006 have been considered but are not deemed persuasive.

Applicant asserts that they have met the two prong test of *Lily* and have provided a great deal of information about homologues (response page 11). Applicant has not defined a representative number of fragments of SEQ ID NO: 2 or 4 that would both increase and decrease flavonoid production in a plant. Common structural elements associated with the claimed genus of sequences that encompasses portions of either SEQ ID NO: 2 or 4 that would increase and decrease flavonoid production in a plant are not defined by the specification or the prior art as well.

Claim Rejections - 35 USC § 102

Claims 13-14, 16-18, 20, 22, 25-27 and 29-30 remain rejected under 35 U.S.C. 102(b) as being anticipated by WO 99/00501 published 7 January 1999. This rejection is maintained for the reasons of record set forth in the Official action mailed 7/27/2005 and 7/19/2006. Applicant's arguments filed 4/28/2006 and 9/19/2006 and 11/20/2006 have been considered but are not deemed persuasive.

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Applicants assertion that the TTG1 from *Arabidopsis* has a function distinct from TT1 (response 11/20/2006 page 9) is incorrect since the applied art reference clearly shows that TTG1 is involved in anthocyanin biosynthesis (i.e. a flavonoid) levels thus having the biological activity of SEQ ID NO: 4 (see page 3 lines 7-31; page 5 lines 29-32, page 7 lines 5-18, page 38 lines 9-28, page 42 lines 10-17 and page 44 lines 10-16). Further, claim 13 recites a nucleic acid sequence comprising a fragment of SEQ ID NO: 2 or 4, and the prior art reference teaches an unspecified fragment of SEQ ID NO: 2 or 4. Moreover, Applicant's alignment shows 3.9% identity at the nucleotide level and identifies unspecified fragments shared between the two polynucleotide sequences.

Claims 13-14, 16-18, 20, 22, 25-27 and 29-30 remain rejected.

Claim 19 is allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell Kallis whose telephone number is (571) 272-0798. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Russell Kallis Ph.D.
July 10, 2006

RUSSELL P. KALLIS, PH.D.
PRIMARY EXAMINER

